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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1370

FORD MOTOR COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT MIDDLE ATLANTIC CONFERENCE IN OPPOSITION

BRYCE REA, JR.
PATRICK MCELIGOT
918-16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700

Counsel for Respondent Middle Atlantic Conference

Of Counsel:

REA, CROSS & AUCHINCLOSS
700 World Center Building
918-16th Street, N.W.
Washington, D.C. 20006

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QUESTIONS PRESENTED

1. Did the Court of Appeals erroneously apply the standard of review announced by this Court in *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742 (1972)?

2. Did the Interstate Commerce Commission act arbitrarily and capriciously in prescribing motor carrier detention rules which require consignees to bear the expense of moving trailers from their holding yards to their unloading docks?

STATEMENT OF THE CASE

On June 22, 1973, the Interstate Commerce Commission instituted a rulemaking proceeding pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, to consider adoption of proposed rules governing the detention of motor vehicle equipment by shippers and receivers of property. The proposed rules would supersede numerous existing rules which vary from region to region and carrier to carrier. As the Commission pointed out in its Notice of Proposed Rulemaking, the failure of motor carriers to provide uniform vehicle detention rules "has given rise to shipper and carrier complaints alleging unjust and unreasonable practices, unjust discrimination, preference and prejudice, as well as unlawful concessions and rebates." Accordingly, it stated that the purpose of the proceeding would be "to discourage undue delays of carriers' vehicles at origins, stopoff points, and destinations, at the same time to assure lawful, nondiscriminatory, nonpreferential, nonprejudicial, reasonable and adequate service, and reasonable vehicle detention rates and charges with respect to all classes, types and sizes of shippers and receivers of interstate freight shipments, nationwide" (A. 117a).

Following receipt of written statements from numerous parties representing shippers, carriers, government agencies, and others,[1] the Commission issued its report and order prescribing uniform nationwide detention rules on May 25, 1976 (A. 16a-134a). Following petitions for reconsideration, the Commission modified in part the report and order by a second report and order issued June 3, 1977 (A. 135a-164a). By order

[1] Some 69 parties filed initial responses to the Notice of Proposed Rulemaking (A. 18a).

dated August 31, 1977 (R. 1206-1208), the Commission denied various petitions for stay of its orders. A final order was issued September 15, 1977 (A. 165a-173a) in which the I.C.C. granted petitions for reconsideration and modification in part and denied petitions for reopening and oral argument. Hence, the rules under judicial review are the product of over four years of extensive analysis and review by the Commission. As it pointed out in its order dated August 31, 1977, the rules "were drafted to reach an equitable balance among the parties and thereby bring order to a troublesome and abused area."

Detention rules of motor common carriers, like demurrage rules of railroads, provide a fixed amount of so-called free time for the loading or unloading of vehicles and impose a detention charge for delays beyond the free time not attributable to the carriers. The Commission's order prescribes two separate rules, each complete and self-contained. The first governs the detention of straight trucks or tractor-trailer combinations, which have been ordered or used to transport shipments subject to truckload rates. Free time under this rule varies according to the weight of the shipment and ranges from two hours for shipments of less than 10,000 pounds to six hours for shipments of 36,000 pounds or more. The detention charges are $18 for the first hour or less and $9 for each additional 30 minutes or fraction thereof.

The second rule governs the detention of trailers only. Consignors and consignees may, at their option, require that trailers be dropped or "spotted" in holding yards on their premises for loading or unloading at their convenience. Free time is greater and detention charges are lower under this rule than under the first in recognition of the fact that the carriers' employees and power units are not detained. However, when the carrier's employee assists in loading, unloading, or checking the freight, the detention provisions governing vehicles with power units apply whether or not the power unit is actually detained. Free time commences once a trailer is spotted at a site designated by the consignor or consignee. Once a trailer is

spotted, the carrier will not move it until it is ready for pickup after loading or unloading. The consignor or consignee is responsible for moving the trailer from the holding yard to the loading or unloading dock. The practice of some carriers in providing this switching service is prohibited under the rule because the economies realized by not having drivers and power units detained "are lost when a carrier must either return a tractor to the yard to shuttle a trailer or pay an agent to do so" (A. 139a). However, it is often advantageous for carriers to drop empty trailers in trailer pools located on shippers' premises so that the trailers will be readily accessible for potential movements of freight. In such cases, the empty trailers, although usually used to transport freight for the shipper on whose premises the trailer rests, may also be used to transport freight for different shippers (A. 148a). The rule initially adopted was modified to provide that detention charges will not apply to trailers parked for a carrier's convenience. The rule provides that empty trailers placed at the premises of a consignor without specific request are not spotted until the carrier receives the consignor's request and places the trailer for spotting. The carrier has the obligation of moving the trailer from the place where it was dropped on the consignor's premises to the specific site designated for spotting. The Commission refused to modify the rule to permit this practice with respect to loaded trailers, however, since "a carrier derives no benefit from having its trailer stand idle awaiting unloading" (A. 141a). Spotted trailers are allowed 24 hours of free time for loading or unloading. The detention charges are as follows:

(1)	For each of the first and second 24-hour periods or fraction thereof (Saturdays, Sundays, and holidays excepted),	$25
(2)	For each of the third and fourth 24-hour periods or fraction thereof (Saturdays, Sundays, and holidays excepted),	35
(3)	For the fifth and each succeeding 24-hour period or fraction thereof (Saturdays, Sundays, and holidays included).	50

Appeals directed only to the second rule were filed in the United States Court of Appeals for the Third Circuit by petitioner and Jones Transfer Company, *et al.* (petitioners in No. 77-1162). Specifically, these petitioners challenged the Commission's conclusions "that the carriers' line-haul obligation ends when a loaded trailer is dropped in the consignee's holding yard" and "the cost of moving the trailer from the holding yard to the unloading dock is the responsibility of the consignee" (A. 168a). National Industrial Traffic League (petitioner in No. 77-1189) also challenged these conclusions and, in addition, it challenged the Commission's findings and conclusions relating to the level of detention charges for vehicles with power units and the burden of proving responsibility for delay of such vehicles.

By order filed September 2, 1977, the Court of Appeals stayed the effectiveness of the Commission's order pending completion of judicial review. On December 29, 1977, the Court affirmed the Commission's decision in a *per curiam* opinion issued in the three consolidated cases. The Court held that the Commission's findings and conclusions were rationally supported and that the evidence in the record was sufficient to sustain the exercise of the Commission's rulemaking authority (A. 10a-11a).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioner advances two principal reasons why this Court should review the decision of the Third Circuit. First, it argues that the Court below misconstrued this Court's opinion in *United States v. Allegheny-Ludlum Steel Corp., supra.* Second, it says that the Commission's decision "arbitrarily and capriciously" requires shippers to bear the expense of moving trailers from their holding yards to their unloading docks. An examination of the petition shows that these contentions are without merit, and that petitioner has failed to set forth any other

special and important reasons why this Court, in the exercise of its sound judicial discretion, should grant certiorari (Rule 19(1)).

The Court of Appeals Properly Applied the Appropriate Standard of Review

Petitioner does not question that this Court's decision in *United States v. Allegheny-Ludlum Steel Corp., supra,* is controlling here. Rather, it says that the Court of Appeals failed to properly apply the standard of review announced in *Allegheny-Ludlum.* This is patently not so. In *Allegheny-Ludlum,* this Court set forth the standard of judicial review for actions of the Interstate Commerce Commission as follows:

> "We do not weigh the evidence introduced before the Commission, we do not inquire into the wisdom of the regulations that the Commission promulgates, and we inquire into the soundness of the reasoning by which the Commission reaches its conclusions only to ascertain that the latter are rationally supported." 406 U.S. at 749.

The Court of Appeals applied that standard here. It announced at the outset of its opinion that it would deny the relief sought in the petitions for review because it was "persuaded that there is a rational basis for the ICC conclusions" (A. 6a). In the course of its opinion, it quoted the standard of review set forth above. It concluded its opinion as follows:

> "... measuring the present petitions against the appropriate standard of judicial review, we conclude that the Commission's findings and conclusions 'are rationally supported.' And to the extent that evidence was required in the record to support the contested conclusions, we find it sufficient to sustain the exercise of the ICC's rulemaking authority" (A. 11a).

The Court's statement that it "might have been receptive to some of the arguments presented by the petitioners" were it "able to utilize a more expansive notion of what is arbitrary, capricious, and an abuse of discretion" does not indicate that it applied an improper standard of review. On the contrary, it shows that the Court was aware of the limited scope of judicial review in a case such as this. It is a long established maxim in the field of administrative law that the courts have no authority to substitute their judgment for that of an agency in the promulgation of regulations. *Addison* v. *Holly Hill Fruit Products,* 322 U.S. 607, 64 S.Ct. 1215 (1944).

The Commission's Decision Was Not Arbitrary and Capricious

Petitioner attacks the provision of the spotting rule which requires consignees to bear the expense of moving trailers from their holding yards to their unloading docks. It argues that motor carriers have a traditional duty to deliver to the unloading dock trailers which have first been dropped in a holding yard. On the contrary, the line-haul rates of motor carriers have traditionally included only one pickup and one delivery. *Paperboard Between New Jersey and New York,* 315 I.C.C. 187, 190 (1961).

Petitioner contends that the placing of trailers in holding yards at destination is for the mutual benefit of carriers and consignees. The Commission properly recognized, however, that "a carrier derives no benefit from having its trailer stand idle awaiting unloading." Carriers want their trailers unloaded as quickly as possible so that they can be made available for other shipments. Consignees are the sole beneficiaries of this practice. The use of holding yards at destination permits relatively inefficient consignees to avoid the detention charges for vehicles with power that would otherwise accrue because of their inability to accomplish deliveries within the allotted free times. As the Commission properly held, however, these consignees cannot have it both ways. If the carrier must leave

the trailer in a holding yard with itself or its agent available to move it, then the detention with power provisions should apply. If the consignee is to receive the benefit of the lower detention charges and greater free time provided by the detention without power rule, then it should be responsible for the movement of the trailer from the holding yard to the unloading area.

Petitioner asserts that the Commission's rule will "largely eliminate the holding yard alternative" (Pet., p. 9). The only effect of the rule will be to require consignees to bear the expense of switching trailers from holding yards to unloading areas. If, as petitioner argues, efficiency dictates the use of holding yards, the shifting of this expense from the carriers to the consignees will not have any effect on their continued use.

CONCLUSION

For the foregoing reasons, the petitions for writ of certiorari should be denied.

Respectfully submitted,

BRYCE REA, JR.
PATRICK MCELIGOT
918-16th Street, N.W.
Washington, D.C. 20006
(202) 785-3700

Counsel for Respondent
Middle Atlantic Conference

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